IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7232 of 1995

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T. CORPORATION - Petitioner(s)

Versus

YAKUB I PATEL & 1 - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR RC PATHAK for Respondent No(s).: 1.
DELETED for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

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1.0 The petitioner Corporation has challenged the award dated 31.03.1995 passed by the Labour Court, Bharuch, in

Reference LCB No. 875 of 1990, whereby the petitioner was directed to reinstate the respondent to his original post with continuity of service and 50 % back wages.

2.0 The respondent was working as a Conductor with the petitioner Corporation. On 19.06.1989, while the respondent was on duty, the bus was checked by the Checking Squad of the petitioner and the Squad found certain irregularities in the issuance of tickets by the respondent. Therefore, charge-sheet was issued and departmental inquiry was held against the respondent. Since the charges leveled against the respondent were proved, he was dismissed from service by order dated 25.01.1990.

2.1 Being aggrieved by the said order, the respondent raised a dispute before the Labour Court by way of a reference. The Labour Court, by impugned award, allowed the said reference as aforesaid. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 05.02.1996 this Court had stayed the operation of the impugned award to the extent of back

wages only subject to the provisions of Section 17(B) of the Industrial Disputes Act, 1947. Pursuant to the aforesaid order, the respondent workman has been reinstated in service. Since the respondent is already reinstated, this Court is not considering this petition so far as the direction granting reinstatement and continuity of service is concerned.

4.0 By exercising powers under Section 11(A) of the Industrial Disputes Act, 1947, the Labour Court has quashed the order of dismissal passed by the petitioner Corporation. However, it has committed an error inasmuch as it has not imposed any penalty while substituting the order of dismissal. Considering the fact that the respondent had committed as many as 57 defaults in the past, the Labour Court ought to have imposed some penalty on the respondent. In my opinion, by not imposing any penalty, the Labour Court has committed serious error of law.

5.0 So far as the direction with regard to back wages is concerned, it is required to be noted that the Labour Court has not given any cogent reasons as to on what basis it has 50 % back wages to the respondent. Looking

to the facts and circumstances of the case and considering the past record of the workman, I am of the opinion that the Labour Court ought not to have awarded any back wages to the workman. Hence, the impugned order of the Labour Court awarding 50 % back wages to the respondent is required to be quashed and set aside.

5.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

5.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua denying the petitioner back wages is required to be confirmed.

6.0 In above view of the matter, this petition is partly

allowed. The impugned award of the Labour Court qua directing the petitioner Corporation to reinstate the respondent workman to his original post with continuity of service is confirmed; and, the direction qua awarding 50 % back wages is quashed and set aside. Further, a penalty of stoppage of SIX increment with future effect is imposed on the respondent. However, it is clarified that the respondent workman shall be entitled for all benefits from the date of the publication of the award, after the aforesaid penalty has been imposed on him. The said benefits to be paid within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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